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June 14, 1993

JUN 14 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

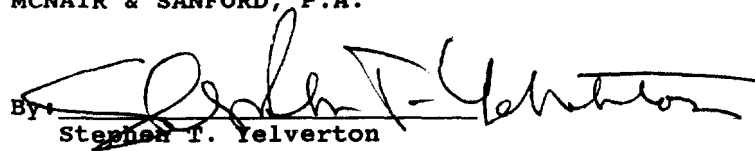
Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Reply to Opposition of Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By:


Stephen T. Felverton

Enclosure

B:SEARCY66.FCC

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JUN 14 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

)
)
) MM Docket No. 93-107

) File Nos. BPH-911230MA

) through

) BPH-911231MB
)

To: Administrative Law Judge
Walter C. Miller

REPLY TO OPPOSITION OF RINGER

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____

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June 14, 1993

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REPLY TO OPPOSITION OF RINGER

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c) of the Commission's Rules, hereby submits this reply to the opposition of David A. Ringer ("Ringer"). ORA filed a motion to enlarge the issues against Ringer on May 17, 1993. Ringer filed an opposition thereto on June 2, 1993. In support of its reply to the opposition of Ringer, ORA submits the following comments.

Section 73.215 Issue

Ringer proposes the use of a directional antenna and requests processing pursuant to Section 73.215. Sub-section (b)(2)(ii) of that provision requires that an applicant, such as Ringer, which desires to take advantage of directionalization, even if not requesting Section 73.215 processing, must protect an affected short-spaced station's contours based on that station's maximum effective radiated power and not on its actual contours. See, On the Beach Broadcasting, FCC 93-211, para. 10, released May 10, 1993. The application of Ringer fails to state that it will provide this required protection to affected short-spaced stations and, in particular, to Station WTTF-FM, Tiffin, Ohio. Moreover, Ringer concedes in his application that in spite of the use of a directional antenna there will be contour overlap with Station WTTF-FM.

In his opposition, Ringer fails to address this admitted contour overlap. The Mass Media Bureau, in its comments, filed June 2, 1993, page 2, para. 3, with respect to the motion to enlarge issues against Ringer, acknowledges that Ringer will have contour overlap with Station WTTF-FM. In "plain English," this means causing actual interference! The public interest would not be served by the grant of an application which will cause actual interference to an existing station when other applications in this proceeding are in strict conformity with the mileage separation requirements and would cause no such interference.

Ringer's application requests processing under the directional antennas provisions of Section 73.215. These provisions strictly prohibit contour overlap. See, Section 73.215 (a). Accordingly, Ringer's application can not be granted, absent a waiver of Section 73.215.

Although Ringer requested in his application a waiver of Section 73.215, the Audio Services Division overlooked this request. Thus, the Presiding Judge is free to specify an appropriate hearing issue in order to act on the waiver request. Atlantic Broadcasting Co., 5 FCC2d 717, 720-721, 8 RR2d 991, 995-996, paras. 9-1 (1966), where the designation order contains no reasoned analysis of the matter in question, the Presiding Judge should make such an analysis and rule on the merits of the motion to enlarge the issues.

Because Ringer's application explicitly elected processing under Section 73.215, he can not now change that election without amending his application. Such amendment must be accompanied by a "good cause" showing under Section 73.3522 (b), including lack of "foreseeability" for engineering amendments.

Section 73.207 Issue

The application of Ringer indicates that his proposed tower site is 6.84 km. short-spaced, under Section 73.207, to Station WTTF-FM, Tiffin, Ohio. Under long-established Commission policy, when an applicant in a comparative hearing is short-spaced under Section 73.207, a hearing issue must be specified as to that applicant's basic qualifications. Jemez Mountain Broadcasters, 7 FCC Rcd 4219, 4220, paras. 2 and 12 (1992); Payne Communications, Inc., 1 FCC Rcd 1052, 1053, paras. 6, 9-10 (Rev. Bd. 1986), aff'd, Evergreen Broadcasting Co., 6 FCC Rcd 5599, 5605, n. 3 (1991); Naquabo Broadcasting Co., 6 FCC Rcd 4879, para. 5 (1991); Madalina Broadcasting, Inc., 6 FCC Rcd 2508, 2509, paras. 3-5 (MMB 1991); Valley Radio, 5 FCC Rcd 4875, 4876, para. 5 (MMB 1990); Donavan Burke, 104 FCC2d 843 (1986); Megamedia, 67 FCC2d 1527 (1978); Clearlake Broadcasting Co., 47 Fed. Reg. 47931 (1982); and North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985). On May 10, 1993, the Commission released On the Beach Broadcasting, FCC 93-211. Therein, at n. 1, it reaffirmed that North Texas Media, Inc. v. FCC, is still binding precedent.

Ringer contends that On the Beach Broadcasting and North Texas are inapplicable because the applications in those proceedings were filed before the adoption of Section 73.215. According to Ringer, the adoption of Section 73.215 effectively eliminated the spacing requirements of Section 73.207. However,

Ringer fails to acknowledge that the use of Section 73.215 to employ a directional antenna is merely a standardized procedure to obtain a waiver of the spacing requirements of Section 73.207. See, MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991). The adoption of Section 73.215 only eliminated the granting of ad hoc and individualized waiver requests under Section 73.207.

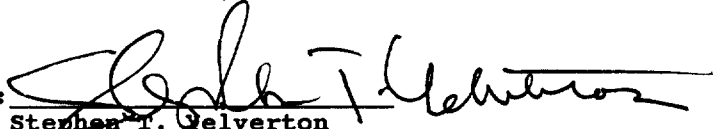
Section 73.207 does not in any way eviscerate the spacing requirements of Section 73.207, or the necessity to show the unavailability of fully-spaced sites. See, para. 27, supra, which states that a short-spaced tower site can be used only when the unavailability of fully-spaced sites are demonstrated and only in the case of necessity. Ringer can make no such showing. Section 73.215 also states that a public interest showing must be made in order to obtain a grant. Ringer can make no such showing.

WHEREFORE, in view of the foregoing, ORA urges that the requested issues be specified against Ringer. He improperly proposes the use of a directional antenna which will cause actual interference to an existing station.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:


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June 14, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 14th day of June, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Ringer" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
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2000 L Street, N.W.
Washington, D.C. 20554

James Shook, Esquire
Hearing Branch
Federal Communications Commission
Room 7212
2025 M Street, N.W.
Washington, D.C. 20554

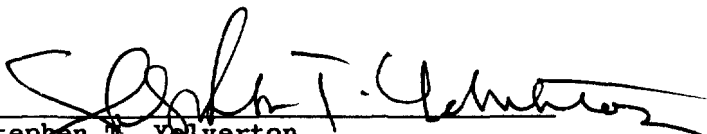
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*Hand Delivery